

No. 12506

United States
Court of Appeals
for the Ninth Circuit.

WESTERN PACIFIC RAILROAD CORPORATION and
ALEXIS I. duP. BAYARD, Receiver,
Appellants,

vs.

WESTERN PACIFIC RAILROAD COMPANY, SACRA-
MENTO NORTHERN RAILWAY, TIDEWATER
SOUTHERN RAILWAY, DEEP CREEK RAILROAD
COMPANY, THE WESTERN REALTY COMPANY,
THE STANDARD REALTY AND DEVELOPMENT
COMPANY and DELTA FINANCE CO., LTD.,
Appellees.

MEREDITH H. METZGER, HENRY OFFERMAN and J. S.
FARLEE & CO., INC.,
Appellants,

vs.

WESTERN PACIFIC RAILROAD COMPANY, SACRA-
MENTO NORTHERN RAILWAY, TIDEWATER
SOUTHERN RAILWAY, DEEP CREEK RAILROAD
COMPANY, THE WESTERN REALTY COMPANY,
THE STANDARD REALTY AND DEVELOPMENT
COMPANY and DELTA FINANCE CO., LTD.,
Appellees.

SUPPLEMENTAL
Transcript of Record

Appeals from the United States District Court,
Northern District of California,
Southern Division.

FILED

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SUPPLEMENTAL
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Appeals from the United States District Court,
Northern District of California,
Southern Division.

EXHIBIT No. 23-A

In the District Court of the United States for the
Northern District of California Southern Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

PETITION OF REORGANIZATION COMMITTEE FOR AN ORDER APPROVING AND AUTHORIZING: INDENTURES RELATING TO FIRST MORTGAGE BONDS AND GENERAL MORTGAGE INCOME BONDS, INCLUDING FORMS OF BONDS, FORM OF INTEREST COUPON AND FORMS OF TRUSTEE'S CERTIFICATES OF AUTHENTICATION; ADJUSTMENT PAYMENTS TO PERSONS TO WHOM NEW SECURITIES ARE ISSUABLE IN RESPECT OF THE PERIOD JANUARY 1, 1939, TO DECEMBER 31, 1943, INCLUSIVE; THE AGGREGATE PRINCIPAL AMOUNT OF GENERAL MORTGAGE INCOME BONDS TO CONSTITUTE SERIES A, THE AGGREGATE PAR VALUE OF THE SHARES OF PREFERRED STOCK TO CONSTITUTE SERIES A, AND ADJUSTMENTS IN THE AGGREGATE AMOUNT OF SAID BONDS AND THE

AGGREGATE PAR VALUE OF SAID STOCK TO BE ISSUED UNDER THE PLAN; THE DENOMINATION OR PAR VALUE, RESPECTIVELY, OF GENERAL MORTGAGE INCOME BOND SCRIP OF SERIES A AND PREFERRED STOCK SCRIP OF SERIES A; AND ADJUSTMENTS IN THE AMOUNT OF GENERAL MORTGAGE INCOME BONDS OF SERIES A AND PREFERRED STOCK OF SERIES A TO BE ISSUED TO THE RAILROAD CREDIT CORPORATION AND A. C. JAMES CO.

Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, being all the members of the Reorganization Committee designated to put into effect and carry out the plan of reorganization of the debtor above named, hereby represent to the Court and petition as follows:

1. The plan of reorganization of the debtor (hereinafter called "the plan") confirmed by order of this Court on October 11, 1943, provides in subdivision R. as follows:

"The plan may be carried out either by re-vesting the properties formerly of the debtor in the debtor company or by transferring said properties to a new corporation organized for the purpose, and the execution by the corporation in which said properties are vested of the new mortgages and the issue by it of the new securities contemplated by the plan.

“The method of carrying out the plan shall be determined by the reorganization committee in its discretion, and the reorganization committee shall also determine, subject to the approval of the court, the form, and, except as herein otherwise expressly provided, the provisions, of all mortgages, bonds, coupons, charters, by-laws, stock certificates, voting trust certificates, acceptances, assents, and all other instruments in the judgment of the reorganization committee necessary or desirable in connection with carrying out the plan.

2. Pursuant to the foregoing provisions of the plan, your petitioners have determined, acting on advice of counsel, that the debtor company should be used in carrying out and making effective the plan of reorganization and should execute the new mortgages and issue the new securities contemplated by the plan. A separate petition is being filed by your petitioners for the approval by this Court of the use of the debtor company.

3. For the purpose of putting into effect and carrying out said plan your petitioners have approved as to substance and general form, and submit herewith for the approval of the Court, the following:

(a) Indenture relating to the First Mortgage Bonds contemplated by the plan, a printer's proof of which is filed herewith as “Exhibit A”;

(b) Indenture relating to the General Mortgage

Income Bonds contemplated by the plan, printer's proof of which is filed herewith as "Exhibit B";

4. The indenture relating to the new First Mortgage Bonds (Exhibit A) contemplates the issuance of bonds of Series A in both coupon and registered form. Said indenture sets forth the form of Series A Coupon Bond, which is in the denomination of \$1,000, the form of interest coupon for Series A Coupon Bonds, the form of Series A Registered Bond, without coupons, and the form of Trustee's Certificate of Authentication, applicable to both forms of bonds. The substance and general form of the foregoing are intended to be included in the submission for approval of the Court hereunder.

5. The indenture relating to the General Mortgage Income Bonds (Exhibit B) contemplates the issuance of bonds of Series A in registered form only. It is contemplated that the bonds of Series A will be issued in denominations of \$100, \$500, \$1,000, \$5,000 and \$10,000, and such other denominations, if any, as may be authorized by the Company, said denominations to be interchangeable except that an exchange may not be made for bonds of a lesser denomination when any such lesser denomination would be less than \$1,000. Said Exhibit B sets forth the form of bond of Series A and the form of Trustee's Certificate of Authentication. The substance and general form of the foregoing are intended to be included in the submission for approval of the Court hereunder.

6. The plan of reorganization of the debtor requires, and the forms of new First Mortgage Bonds, Series A, and of new General Mortgage 4½% Income Bonds, Series A, contemplate that the new bonds distributed under the plan of reorganization shall be dated as of January 1, 1939. Petitioners have determined, subject to the approval of the Court, that the new Preferred Stock, Series A, and the new common stock to be issued upon consummation of the Plan should be dated as of January 1, 1944.

7. The form of indenture for the General Mortgage Income bonds (Exhibit B) submitted to the Court herewith necessarily includes (Sec. 5.03) the determinations made by your petitioners, subject to the approval of the Court, of the "available net income" of the properties of the debtor during the period from January 1, 1939 to December 31, 1943, as required by Subdivision L of the plan of reorganization and the allocation of this income in accordance with the equitable rights under the plan of the participating creditors who will receive the new securities. The plan clearly contemplates that, as between the classes of interested creditors, the available net income of the debtor for any period after January 1, 1939, until the reorganized company comes into ownership and possession of the properties of the debtor shall be treated as if the reorganized company had come into such ownership and possession of the properties on January 1, 1939, and had issued as of that date the new securities is-

suable under the plan, other than the \$10,000,000 First Mortgage Bonds, Series A, and contemplates that for the period after January 1, 1939, until the reorganized company comes into ownership and possession of the debtor's properties, the persons to whom the new securities are issuable shall be entitled to receive appropriate payments in lieu of the interest and dividends to which they would presumably have been entitled under the provisions of the plan, if the plan had been consummated on January 1, 1939.

8. All the securities to be issued in this reorganization will be issued to first mortgage bondholders and secured creditors of the debtor. No provision is made under the plan for unsecured creditors or for owners of preferred or common stock of the debtor company. During the period from January 1, 1939, through the calendar year 1943, the properties of the debtor, which have been under the management of the Trustees appointed by this Court, have shown substantial earnings which would have been available for interest and dividends. The Reorganization Committee, under its duty to carry out the plan pursuant to its terms and intent, and subject to the approval of this Court, has determined that there should be made to said first mortgage bondholders and secured creditors at the time they surrender the obligations of the debtor which they now hold, and receive in satisfaction thereof the new securities authorized under the plan, certain adjustment payments in cash representing the

amounts which said first mortgage bondholders and secured creditors might presumably have received on the new securities which they are to receive under the plan, if such securities had actually been in existence since January 1, 1939, and payments of interest and dividends made thereunder.

9. In determining the amounts of adjustment payments which it is proposed to make, at the time of the consummation of the plan, to carry out the intent of the plan as to recognition as between the various classes of creditors of their equitable right to participate in earnings on the same basis as if the new securities had actually been issued on January 1, 1939, your petitioners have reviewed the earnings records of the properties of the debtor for the period from January 1, 1939, through the calendar year 1943.

10. As reported by the accounting department maintained by the Trustees appointed by this Court, the earnings of the estate of the debtor and its wholly owned railway subsidiaries in the year 1939, after capital fund requirements and before interest (other than equipment trust and trustees' certificate interest), were \$567,407.30, and were therefore such that income in that amount, viz. \$567,407.30 would have been available, under the provisions of the plan, for the payment of interest on the General Mortgage Income Bonds to be issued upon consummation of the plan. The corresponding earnings in the year 1940, amounting to \$1,707,964.93, were such that income in the amount of \$954,855 would have

been available, under the provisions of the plan, for the payment of full interest on the General Mortgage Income Bonds for the year 1940, income of \$387,447.70 for the balance of unpaid interest on such bonds for the year 1939, income of \$106,090 for sinking fund requirements with respect to such bonds for the year 1940, and income in the amount of \$259,572.23 would have been available for the payment of dividends on the preferred stock to be issued upon consummation of the plan or for other corporate purposes. The corresponding earnings in the year 1941, amounting to \$3,650,651.56, were such that sufficient income would have been available, under the provisions of the plan, for the payment of full interest on the General Mortgage Income Bonds, the sinking fund requirement and a dividend of 5% on the preferred stock and after such payments a balance of \$997,196.56 of income available for dividends on the common stock and for other corporate purposes would have remained. The corresponding earnings in the year 1942, amounting to \$9,126,016.98, were such that sufficient income would have been available, under the provisions of the plan, for the payment of full interest on the General Mortgage Income Bonds, the sinking fund requirement and a dividend of 5% on the preferred stock, and after such payments a balance of \$6,472,561.98, of income available for dividends on the common stock and for other corporate purposes would have remained. The corresponding earnings in the year 1943, amounting to \$18,683,299.07, were such that sufficient income would have been available, under

the provisions of the plan, for the payment of full interest on the General Mortgage Income Bonds, the sinking fund requirement and a dividend of 5% on the preferred stock, and after such payments a balance of \$16,029,844.07 of income available for dividends on the common stock and for other corporate purposes would have remained. Attached hereto, as Exhibit "C," is a summary of Available Net Income and Other Data for the period January 1, 1939 to December 31, 1943, inclusive.

11. The above data (paragraph 10) as to earnings after capital fund requirements and before interest (other than equipment trust and trustees' certificate interest) for the period from January 1, 1939 through the calendar year 1943, are subject to the following comments:

(a) The amounts of such earnings for each calendar year are shown after deducting the capital fund requirements, as provided in the plan, without application of the over-all limitation of \$1,000,000, which, as provided in the indenture (Section 5.05) relating to the General Mortgage Income Bonds (Exhibit B) submitted herewith for approval, has been left for adjustment, in respect of the cost of capital investments during the period between January 1, 1939 and December 31, 1943, in the discretion of the directors after the reorganization.

(b) The amounts of such earnings for the calendar years 1942 and 1943 are after deducting deferred maintenance reserves charged to operating ex-

penses, namely, the respective amounts of \$999,082 and \$1,172,542, and amounts for amortization of road defense projects charged to operating expenses, namely, the respective amounts of \$63,840.84 and \$134,412.46.

(c) The amount of such earnings for the calendar year 1943, is before deduction of a special funded tax reserve which has been set up in the amount of \$7,100,000. However, after deduction of such reserve there would still remain the amount of \$11,583,299.07, which would have been available, under the provisions of the plan, for the payment of full interest on the General Mortgage Income Bonds, the sinking fund requirements and a dividend of 5% on the preferred stock, and after such payment a balance of \$8,929,844.07 available for dividends on the common stock and for other corporate purposes would have remained.

(d) The amount of interest upon the General Mortgage Income Bonds and the amount of the preferred stock dividends have been computed upon the aggregate principal or par amounts of such securities contemplated under the plan to be issued in the reorganization, reduced by the minor amounts in respect of the proposed cash payments referred to under paragraph 18 hereinbelow.

(e) The aggregate amount of earnings for the entire period from January 1, 1939, through the calendar year 1943, which would have been available to pay interest to the old first mortgage bondholders and secured creditors was \$35,434,735.76. This

amount is to be compared with the aggregate interest for the period (\$14,437,203.55) which such creditors entitled to participate under the plan would legally be entitled to receive under the obligations of the debtor which they hold but for the provision of the plan as to equitable adjustment on the basis of the new securities to be issued on the consummation of the plan.

(f) The properties of the debtor earned for the years specified below, after all interest and preferred dividends, and available for dividends on the common stock and other proper corporate purposes, the following approximate amounts per share of common stock to be issued under the plan:

Year	Earnings per share
1941	\$ 3.12
1942	\$20.28
1943	\$50.24

In respect of the year 1943, if the special tax reserve, referred to above in subparagraph (c) of this paragraph 11, were to be deducted, the approximate earnings per share would be \$27.99.

(g) The foregoing amounts per share and the aggregate amount set forth in paragraph 13 hereinbelow, have been computed upon the basis of the full number of common shares to be issued in the reorganization, as determined by the decision of this Court construing the plan, dated June 21, 1944, namely, 319,032,767 shares. This number is sub-

ject to reduction in respect of the number of shares to be issued to The Railroad Credit Corporation depending upon the amount of payments to that Corporation under the marshalling and distributing plan of 1931 which amount cannot be finally determined until the time of the consummation of the reorganization.

12. In the reports of October 10, 1938, and June 21, 1939, filed by the Interstate Commerce Commission in connection with this reorganization, the Commission has clearly expressed its desire and purpose that the new financial structure should include only such an amount of common stock as might permit reasonable dividends (sometimes specified as \$3.00 per share) to be earned and paid thereon under normal conditions. The properties of the debtor earned, during the five-year period from January 1, 1939 to December 31, 1943, after interest, capital fund, sinking fund and preferred stock dividends under the new capital structure, an aggregate amount equal to approximately \$73.66 per share on the proposed new common stock. However, these earnings available for common stock dividends and other corporate purposes occurred entirely in the years 1941, 1942 and 1943. The plan provides that not more than \$3.00 per share with respect to any one year shall be paid to the common stockholders of the reorganized company without additional participation by the preferred stockholders.

13. After full consideration of the purpose and intent of the plan, your petitioners have determined

and recommend to the Court for approval that an aggregate amount of \$12,684,271.54 be paid to the present first mortgage and secured creditors, at the time of the consummation of the plan, representing their equitable right as provided in the plan to participate in earnings of the properties during the period from January 1, 1939 through December 31, 1943, to be paid at the time they surrender the obligations of the debtor now held by them for the new securities authorized under the plan.

14. The cash held by the debtor's Trustees is such that, without endangering the cash resources of the reorganized company, such adjustment payments may be made to such bondholders and secured creditors.

15. Petitioners recommend that upon the distribution of the new General Mortgage 4½% Income Bonds, Series A, Preferred Stock, Series A, and common stock, under the provisions of the plan of reorganization, the debtor's Trustees make or cause to be made, through the exchange-depositary to be approved by the Court by one or more checks as may be convenient, adjustment payments in cash as follows:

(a) with each General Mortgage 4½% Income Bond, Series A, issued and distributed under the plan, a cash payment of 22½% of the principal amount thereof;

(b) with each share of Preferred stock, Series A, issued and distributed under the plan, a cash payment of \$15.82; and

(c) with each share of common stock, issued and distributed under the plan, a cash payment of \$9.00.

16. Your petitioners do not recommend that cash payments be made with the scrip certificates for the General Mortgage 4½% Income Bonds or with the scrip certificates for preferred and common stock, but recommend that provision be made for a deposit of sufficient funds with an agent to be approved by the Court for payments corresponding in amounts and percentages to those stated in paragraph 15 hereof, when such scrip is exchanged for General Mortgage 4½% Income Bonds, Preferred Stock and Common Stock, respectively.

17. The plan of reorganization of the debtor provides in subdivision P. for the issuance of a specific amount or number of bonds and shares of stock to the various creditors entitled to participate under the plan. In order to satisfy the requirements, it will be necessary, in the instance of the General Mortgage 4½% Income Bonds, Series A, the Preferred Stock, Series A, and the common stock to be issued under the plan, to provide bond and stock scrip. The form and substance of such scrip will be submitted later for the approval of this Court. At this time, however, your petitioners have determined, subject to the approval of the Court, that the scrip for said bonds and the scrip for said Preferred Stock should be limited in each case to one denomination or par amount; namely, \$20, and that the scrip for said common stock should be for

a number of fractions of a share which would not be fixed but would be filled in when issued with appropriate fractions of not less than thousandths of a share.

18. In the event the denomination and par amount of the foregoing bond and preferred stock scrip are limited to \$20, the requirements of The Railroad Credit Corporation and the A. C. James Co. under subdivision P. of the plan cannot be satisfied exactly by the issuance of such scrip. Furthermore, the aggregate principal amount of Series A bonds to be issued under the plan, namely \$21,219,075, does not enable a complete issuance of bonds in denominations the lowest of which is \$100.00. Similarly the aggregate par value of the Series A Preferred Stock to be issued under the plan, namely, \$31,850,297, does not enable a complete issuance of full shares where as in this instance the par value is \$100. Accordingly your petitioners propose, subject to the approval of the Court, to provide for the issuance of an aggregate principal amount of General Mortgage 4½% Income Bonds, Series A, of \$21,219,000 and for the issuance of Preferred Stock, Series A in the aggregate par value of \$31,850,200. Your petitioners have determined in this connection, subject to the approval of the Court, that the aggregate principal amount of Series A of said bonds should be fixed at the amount of \$21,219,000, the amount shown in the indenture relating to said bonds (Exhibit B) and that the total number of shares in Series A of said preferred stock should be

fixed at 318,502 shares. Your petitioners propose, further, subject to the approval of the Court, to make the necessary adjustments, so that the total amount of said Series A Bonds and the total par value of said Series A Preferred Stock issued to all claimants under the plan (including bonds and stock issued to cover scrip) will equal the foregoing aggregate principal and par amounts, by reducing the amount of Series A Bonds and Series A Preferred Stock to be issued to The Railroad Credit Corporation and the A. C. James Co., with payments of the difference in cash as follows:

	Income Bonds		Preferred Stock		Total
	Per Plan	Proposed	Per Plan	Proposed	Cash
The Railroad Credit Corporation	\$154,111	\$154,080	\$241,681	\$241,640 in stock	
		31 in cash		41 in cash	\$ 72
A. C. James Co.	\$163,724	\$163,680	\$256,756	\$256,700 in stock	
		44 in cash		56 in cash	100
					<hr/> \$172

Wherefore, your petitioners pray for the order of this Court:

(a) Approving, in substance and general form, the Indenture relating to the First Mortgage Bonds contemplated by the plan of reorganization of the debtor, a printer's proof of which is filed herewith as "Exhibit A," subject to such minor changes as the Reorganization Committee, upon advice of counsel, may deem advisable;

(b) Approving, in substance and general form,

the Indenture relating to the General Mortgage Income Bonds contemplated by the plan of reorganization of the debtor, a printer's proof of which is filed herewith as "Exhibit B," subject to such minor changes as the Reorganization Committee, upon advice of counsel, may deem advisable;

(c) Approving in substance and general form, the bonds, interest coupon and trustee's certificates of authentication, the forms of which are set forth in said Exhibits "A" and "B," subject to such minor changes as the Reorganization Committee, upon advice of counsel, may deem advisable;

(d) Approving the recommendation of your petitioners that First Mortgage Bonds, Series A, and General Mortgage 4½% Income Bonds, Series A, to be issued pursuant to the plan, be dated as of January 1, 1939, and that Preferred Stock, Series A, and common stock, to be issued pursuant to the plan, be dated as of January 1, 1944;

(e) Approving the recommendation of your petitioners, and directing the Trustees of the debtor's estate, at the time of the consummation of the plan, to make the adjustment payments in cash, set forth in paragraphs 15 and 16 hereof, in the aggregate amount of \$12,684,271.54;

(f) Approval of the fixing of the aggregate principal amount of Series A of the General Mortgage Income Bonds at the amount of \$21,219,000 and the total number of shares in Series A of the Preferred Stock at 318,502 shares, and the issuance of only

said aggregate principal amount of said bonds and said total number of shares of said stock in fulfillment of the requirements of the plan of reorganization of the debtor.

(g) Approving the issuance of scrip in respect of General Mortgage 4½% Income Bonds, Series A and scrip in respect of Preferred Stock, Series A, only in denomination and par value, respectively, of \$20, and the issuance of scrip with respect to common stock in the form of open or blank denomination to be filled in when issued with appropriate fractions of not less than thousandths of a share.

(h) Approval of the adjustments in the amount of General Mortgage Income Bonds and Preferred Stock to be issued to The Railroad Credit Corporation and A. C. James Co. and the cash payments to said creditors as proposed in paragraph 18 hereof.

(i) Granting such other and further relief as may be proper in the premises.

Respectfully submitted,

WHITMAN, RANSOM,
COULSON & GOETZ,

/s/ WHITMAN, RANSOM,
COULSON & GOETZ,

/s/ PILLSBURY, MADISON,
SUTRO,

Counsel for Petitioners.

State of New York,
County of New York—ss.

Robert E. Coulson, being duly sworn, deposes and says:

That he is a member of the Reorganization Committee of The Western Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

/s/ ROBERT E. COULSON.

Sworn to before me this 18th day of August, 1944.

[Seal): /s/ BEATRICE C. CUNNINGHAM,
Notary Public, New York County, N. Y. Co. Clk's
No. 212 Reg. No. 426C6, Kings Co. Clk's No. 173
Reg. No. 319C6, Bronx Co. Clk's No. 38 Reg.
No. 140C6, Queens Co. Clk's No. 757 Reg. No.
20906, Certificate filed in Richmond County.

Commission Expires March 30, 1946.

Original Filed U.S.D.C. August 23, 1944.

EXHIBIT No. 23-B

In the District Court of the United States for the
Northern District of California Southern Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

ORDER APPROVING AND AUTHORIZING
MORTGAGE INDENTURES, FORMS OF
BONDS, INTEREST COUPONS, ETC.; AD-
JUSTMENT PAYMENTS TO PERSONS
TO WHOM NEW SECURITIES ARE ISSU-
ABLE UNDER THE PLAN AND OTHER
MATTERS

The petition filed August 23, 1944, by Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the Reorganization Committee designated to put into effect and carry out the plan of reorganization of the debtor above named, for an order approving and authorizing: indentures relating to First Mortgage Bonds and General Mortgage Income Bonds, including forms of Bonds, form of Interest Coupon and forms of Trustees' Certificates of Authentication; adjustment payments to persons to whom new securities are issuable in respect of the period January 1, 1939 to December 31, 1943, inclusive; the

aggregate principal amount of General Mortgage Income Bonds to constitute Series A, the aggregate par value and number of shares of Preferred Stock to constitute Series A, and adjustments in the aggregate amount of said bonds and the aggregate par value of said stock to be issued under the plan; the denominations, respectively, of General Mortgage Income Bond Scrip of Series A, Preferred Stock Scrip of Series A, and Common Stock Scrip; and adjustments in the amount of General Mortgage Income Bonds of Series A and Preferred Stock of Series A to be issued to The Railroad Credit Corporation and A. C. James Co., duly came on to be heard and was heard September 25, 1944, and has been submitted.

The Court being fully advised in the premises finds that notice of the hearing upon said petition has been given as prescribed by the order of this Court dated and filed August 23, 1944, and that all of the allegations and representations contained in the petition are true except for certain minor corrections made and noted at the hearing on September 25, 1944. The Court further finds and concludes:

(a) The proposed indenture relating to the First Mortgage Bonds contemplated by the plan (Exhibit "A" filed with the petition), with the corrections and changes submitted by petitioners at the hearing on September 25, 1944, and the denomination and form of Series A Coupon Bond, the form of Interest Coupon for Series A Coupon Bonds, the form of Series A Registered Bond without coupons, and

the form of Trustee's Certificate of Authentication applicable to both forms of bonds, all as set forth in said Exhibit "A," are consistent with the plan of reorganization and appropriate for carrying out and making effective the plan and should be approved;

(b) The proposed indenture relating to the General Mortgage Income Bonds contemplated by the plan (Exhibit "B" filed with the petition), with the corrections and changes submitted by petitioners at the hearing on September 25, 1944, and the denominations and form of Series A Registered Bond and the form of Trustee's Certificate of Authentication set forth in said Exhibit "B," are consistent with the plan of reorganization and appropriate for carrying out and making effective the plan and should be approved;

(c) The mortgage indentures should be dated as of January 1, 1939, as provided in the plan of reorganization; the First Mortgage Bonds, Series A, should be dated as of January 1, 1939; the General Mortgage 4½% Income Bonds, Series A, should be dated as of January 1, 1939; and the new Preferred Stock, Series A, and the new common stock to be issued upon consummation of the plan should be dated as of January 1, 1944;

(d) The available net income of the debtor and its subsidiaries for the years 1939 to 1943, inclusive, determined under the provisions of Subdivision L of the plan, is as follows:

1939	\$ 1,017,478.91
1940	2,156,001.35
1941	4,093,588.31
1942	9,484,368.12
1943	18,703,511.00

Total\$35,454,947.69

Upon the consummation of the plan an amount equivalent to such available net income should be applied as directed in ordering paragraphs 5 and 6 hereinbelow;

(e) The cash held by the debtor's Trustees is such that, without endangering the cash resources of the reorganized company, the adjustment payments recommended by the Reorganization Committee may be made to the existing first mortgage bondholders and secured creditors of the debtor;

(f) The determination and recommendation of the Reorganization Committee that adjustment payments in cash in the aggregate amount of approximately \$12,681,086.52 be made to the present first mortgage bondholders and secured creditors of the debtor at the time of the consummation of the plan, are in accordance with the plan of reorganization and appropriate and should be approved; and payments corresponding in amounts and percentages to those recommended in paragraph 15 of the petition should also be made at the time of the consummation of the plan with the scrip certificates issued for General Mortgage 4½% Income Bonds, Series

A, Preferred Stock, Series A, and Common Stock, to the nearest cent in the case of each such bondholder and secured creditor;

(g) The determination and recommendation of the Reorganization Committee that the scrip certificates for General Mortgage 4½% Income Bonds, Series A, and the scrip certificates for Preferred Stock, Series A, be issued only in denominations of \$20 and one-fifth of a share, respectively, and that the scrip certificates for common stock should be for a fraction of a share which would not be fixed but would be filled in when issued with appropriate fractions of not less than thousandths of a share, are consistent with the plan of reorganization and appropriate and should be approved;

(h) The determination and recommendation of the Reorganization Committee that the aggregate principal amount of General Mortgage 4½% Income Bonds, Series A, to be issued in the reorganization be fixed at \$21,219,000, that the aggregate par value of Preferred Stock, Series A, to be issued in the reorganization be fixed at \$31,850,200, under the provisions of the plan, and that a cash payment of \$72 be made to The Railroad Credit Corporation and a cash payment of \$100 be made to A. C. James Co., with corresponding reductions in the aggregate amounts of said bonds and stocks to avoid the issuance of such bonds in denominations of less than \$100 and of fractional shares of such preferred stock, are consistent with the plan and appropriate and should be approved.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed

1. That the indenture relating to the First Mortgage Bonds contemplated by the plan of reorganization (Exhibit "A" filed with the petition), with the corrections and changes submitted by the petitioners at the hearing on September 25, 1944, and the form and denomination of Series A Coupon Bond, the form of Interest Coupon for Series A Coupon Bonds, the form of Series A Registered Bond without coupons, and the form of Trustee's Certificate of Authentication, all as set forth in said Exhibit "A," be and hereby are approved as to substance and general form subject to such minor changes as the Reorganization Committee, upon advice of counsel, may deem advisable;

2. That the indenture relating to the General Mortgage Income Bonds contemplated by the plan of reorganization (Exhibit "B" filed with the petition) with the corrections and changes submitted by petitioners at the hearing on September 25, 1944, and the form and denomination of Series A Registered Bond and the form of Trustee's Certificate of Authentication set forth in said Exhibit "B," be and hereby are approved as to substance and general form subject to such minor changes as the Reorganization Committee, upon advice of counsel, may deem advisable;

3. That the determination and recommendation of the Reorganization Committee that First Mortgage Bonds, Series A, be dated as of January 1,

1939, that General Mortgage 4½% Income Bonds be dated as of January 1, 1939, and that Preferred Stock, Series A, and the common stock to be issued pursuant to the plan be dated as of January 1, 1944, be and hereby are approved;

4. That the issuance of scrip certificates in respect of General Mortgage 4½% Income Bonds, Series A, and scrip certificates in respect of Preferred Stock, Series A, only in denominations, respectively, of \$20 and one-fifth of a share, and the issuance of scrip certificates with respect to common stock in the form of open or blank denomination to be filled in when issued with appropriate fractions of not less than thousandths of a share, be and hereby are approved;

5. That the Trustees of the debtor's estate be and hereby are directed to make or cause to be made at the time of the consummation of the plan, through the exchange depositary to be approved by the Court, in such manner as may be convenient, adjustment payments in cash, in the aggregate amount of \$12,681,086.52, or such lesser or greater amount as may be required to make payments to individual creditors to the nearest cent, and in such individual amount or amounts as shall equal the total of or each of the following, as the Reorganization Committee may determine:

(a) with each General Mortgage 4½% Income Bond, Series A, issued and distributed under the plan, a cash payment of 22½% of the principal amount thereof;

(b) with each share of Preferred Stock, Series A, issued and distributed under the plan, a cash payment of \$15.81;

(c) with each share of common stock, issued and distributed under the plan, a cash payment of \$9.00; and

(d) with scrip certificates for General Mortgage 4½% Income Bonds, Series A, Preferred Stock, Series A, and common stock, issued and distributed under the plan, payments corresponding in amounts and percentages to those directed in this paragraph to be made with such Bonds, Preferred Stock and common stock, respectively;

6. That the balance of the available net income of the debtor and its subsidiaries for the years 1939 to 1943, inclusive, remaining after the payments directed in paragraph 5 hereof, be applied as follows:

(a) \$1,699,395.92 to be credited by the reorganized company to the capital fund account within thirty days after the consummation of the plan, provided, however, that such account shall be reduced prior to or at the end of such thirty-day period to \$1,000,000 either by proper charges to such account, under the provisions of the plan, or by reducing said account by the amount of the excess over \$1,000,000;

(b) \$424,360 to be applied to the making of the sinking fund payments required by subdivision L of the plan in respect of the General Mortgage 4½% Income Bonds, Series A; and

(c) \$20,659,938.92, or the remaining balance of said available net income, to be applied to any proper corporate purpose of the reorganized company;

7. That the aggregate principal amount of Series A of General Mortgage Income Bonds be fixed at \$21,219,000, and that the total number of shares in Series A of the Preferred Stock be fixed at 318,502 shares of the par value of \$100 each, and that \$21,219,000 principal amount of said bonds and 318,502 shares of said Preferred Stock be issued in fulfillment of the requirements of the plan of reorganization:

8. That The Railroad Credit Corporation receive, in fulfillment of the requirements of paragraph 4 of Subdivision P of the plan of reorganization, \$154,080 General Mortgage 4½% Income Bonds, Series A, \$241,640 Preferred Stock, Series A, not more than 35,425 shares of common stock and cash in the amount of \$72.00; and

9. That A. C. James Co. receive, in fulfillment of the requirements of paragraph 5 of Subdivision P of the plan of reorganization, \$163,680 General Mortgage 4½% Income Bonds, Series A, \$256,700 Preferred Stock, Series A, 37,635 shares of common stock and cash in the amount of \$100.00.

Dated Sept. 25, 1944.

/s/ A. F. ST. SURE,
District Judge.

[Endorsed]: Filed April 6, 1949.

[Endorsed]: No. 12506. United States Court of Appeals for the Ninth Circuit. Western Pacific Railroad Corporation and Alexis I. duP. Bayard, Receiver, Appellants, vs. Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway, Deep Creek Railroad Company, the Western Realty Company, the Standard Realty and Development Company and Delta Finance Co., Ltd., Appellees. Meredith H. Metzger, Henry Offerman and J. S. Farlee & Co., Inc., Appellants, vs. Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway, Deep Creek Railroad Company, the Western Realty Company, the Standard Realty and Development Company and Delta Finance Co., Ltd., Appellees. Supplemental Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed March 20, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

